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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-09

RE: Act 154, Session Laws of Hawaii 2009, Relating to Taxation.

On June 25, 2009, Governor Linda Lingle signed Senate Bill 464 SD2, HD2, CD2 into law as Act 154.

This Act makes a number of amendments to the existing renewable energy technologies income tax credit (§ 235-12.5, Hawaii Revised Statutes (HRS)).

Subsection (a) of § 235-12.5, HRS is amended to simplify the identification of systems eligible for this credit. The Act removes the solar thermal and photovoltaic classifications, and simply provides a single solar classification in addition to the already existing wind classification.

New subsection (b) retains the cap amounts from the previous version of the credit, but applies the lower solar system cap to a system if the primary purpose of that system is to use energy from the sun to heat water for "household use." "Household use" is defined as any use to which heated water is commonly put in a residential setting, including commercial application of those uses. For example, if a solar energy system is installed and placed in service for a hotel commercial property and the primary purpose of the system is to heat water for dishwashing, cooking, bathing or showering, then the cap applicable to that system would be $250,000 instead of $500,000. The wind-powered system caps remain unchanged.

Under certain circumstances, this Act provides a taxpayer with an election to treat the credit as refundable, meaning the taxpayer would receive a refund of any credit amount remaining after being applied to any tax liability. The first circumstance involves solar energy systems and any taxpayer. If a taxpayer makes an election under new subsection (g), then, for solar energy systems only, the taxpayer would calculate its credit as if the credit were non-refundable, including the application of any credit cap, and then reduce that amount by 30%. No taxpayer is required to make this election. If it is better for the taxpayer to claim the credit as a non-refundable credit, not subject to the 30% reduction, the taxpayer simply does not make the refundable credit election. Once an election is made, it cannot be undone.

The second circumstance involves any type of renewable energy technology system, but only particular taxpayers. In the case where all of a taxpayer's income is exempt under a public retirement system or received in the form of a pension for past services, or where the taxpayer's

adjusted gross income is $20,000 or less ($40,000 or less if filing jointly), the taxpayer may elect to claim the credit as a refundable credit without any further reduction.

This Act also removes former subsection (g) which prohibited residential home developers from claiming the credit. Please refer to Tax Information Release 2007-02 for information concerning when a developer may claim this credit. In no circumstances may this credit be claimed by both a developer and a homeowner for the same system.

The final significant amendment is in subsection (i), which does not allow any credit for the portion of the renewable energy technology system that is mandated by § 196-6.5, HRS. Language was also added to subsection (b), providing that if all or a portion of a solar energy system or wind-powered system is used to fulfill the substitute renewable energy technology requirement pursuant to § 196-6.5(a)(3), HRS then credit is further reduced or eliminated. With regard to subsection (b), in the case of a wind-powered system, if any portion of the system is used as a substitute for a mandatory solar water heating system, then the credit is eliminated. In the case of solar energy system, the credit is reduced by the lesser of 35% of the actual system cost or $2,250. This Act clarifies that no credit is available for a solar water heating system that is required for new single-family residential property constructed on or after January 1, 2010. However, the credit is available for systems installed and placed in service on single-family residential property constructed prior to January 1, 2010.

The effective date for this Act is July 1, 2009, and it applies to taxable years beginning after December 31, 2008. The fact that this Act only applies to taxable years after December 31, 2008 may cause confusion for some fiscal year filers. According to subsection (k), the new language of the credit will apply to systems placed in service on or after July 1, 2009. However, because the Act is only effective for taxable years beginning after December 31, 2008, there may be instances where a person places in service a system on or after July 1, 2009, but must apply the old law because the person's taxable year began before December 31, 2008. For example, if a taxpayer's fiscal year began on November 1, 2008, the taxpayer will have to wait until after November 1, 2009 to install and place in service a system if the taxpayer wants to take advantage of the refundable election provided in this Act.

For more information on Act 154, please contact the Rules Office at 808-587-1577.



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